

C-8353

SUPREME COURT OF TEXAS CASES

EDGEWOOD

INDEPENDENT

SCHOOL DISTRICT, ET AL. U.

KIRBY,

WILLIAM,

ET AL. (3RD

DISTRICT)

1988-89 931

C-8353  
EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.  
WILLIAM, ET AL. (3RD DISTRICT)

SUPREME COURT OF TEXAS CASES

KIRBY,

031  
1988-89

MISCEL-  
LANEOUS

END

ability to provide equitable public education to its citizens.

Accordingly, the Teachers, Graduates and Students of Copperas Cove High School, Copperas Cove, Texas respectfully pray that this Court consider the attached statements and uphold the decision of the trial court in the case at bar.

Respectfully submitted,  
ARNOLD AND NICOLAS  
800 One Capitol Square  
300 West Fifteenth Street  
Austin, Texas 78701  
512-320-5200

by Sandra R. Nicolas  
Sandra R. Nicolas  
State Bar No. 15016500

## STATEMENT OF AMICUS CURIAE JANICE A. STALDER

I have been both a student and a teacher in Texas schools, but the biggest difference between my experiences in Calhoun County I.S.D. and in Copperas Cove I.S.D. has not been on the side of the desk from which I have viewed the two districts. The difference between Calhoun and Copperas Cove is a four-letter word: CASH. As a student in the 1960s, I had available to me at Calhoun County High School facilities which Copperas Cove still has not been able to afford. Today our drama teacher and students would be glad to have access to an auditorium that Calhoun declared inadequate and replaced 20 years ago.

Since coming to Copperas Cove in 1978, I have struggled to deal with overcrowded and overly large classes in a way that would harm neither the students' educations nor my health. To meet both goals has not always been possible. For example, several years ago I taught two classes in advanced Junior English. One had 33 students in it while another had 31, yet all these students were crammed into three-fourths of a classroom (the other one-fourth housed equipment used in my journalism classes). I did not do a good job as a teacher that year, and I was so frustrated that I nearly left Copperas Cove that summer for a better paid position in a school with much more spacious and modern facilities.

One reason that I didn't leave was that our district promised me a better situation in "new" facilities the next year. We did not have enough money to build a new high school, so we tried the band-aid approach. We switched the high school and junior high school campuses and expanded the old junior high. I was delighted with the renovated science room that became my journalism room, but all too soon I found myself and my students again crowding too much equipment and too many students into inadequate space. Last year I asked the district to use free-standing bookcases to divide my English classroom so that the overflow from the journalism program could once again encroach on English space.

My journalism students produce a newspaper that is a state and national champion, but they do not do the quality of work they could if they had the equipment and facilities which our competitors use. We put in long hours after school to do manually what other, richer schools can do in a few minutes on a computer. Both my students and I feel the "burn-out" symptoms as we strive to produce quality work and keep up with a rapidly changing and largely unaffordable technology.

And in the two senior English classes which I also teach? I am proud that my English students frequently are able to test out of freshman English in college, but more and more I find it difficult to find the energy to do the extra work necessary to help the students reach their potential. Time-saving devices that help students and teachers in richer districts are not available here, and each year I see the gap between Copperas Cove and richer districts widening.

I do not want to leave Copperas Cove, but someday I may have to. Not only must I accept a lower salary and fewer benefits here (this year was the first year since I came here that the district has partially paid the insurance coverage on its employees), but also I know that colleagues in other districts are building a stronger retirement base. At 43 I can still afford to be a little idealistic, but at 53?

Also, I have not yet reached a stage that I have seen many other good teachers reach: a stage of frustration at which they can no longer give their best to their students. When a teacher deals with as many as 150 students daily, when he lacks modern equipment with which to teach the students, when he knows better than to ask for the assistance of an aide (too expensive!), he quickly becomes frustrated. When he sees teachers in other districts doing less work but making more money, he becomes angry. If he stays with the poor district, all too often he lets his bitterness make him a less effective teacher. If he leaves the district, he may solve his personal problems, but what about his students' problems?

**STATEMENT OF AMICUS CURIAE JANICE A. STALDER**

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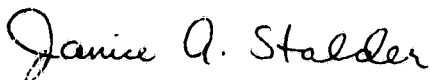
Copperas Cove has had at least four different chemistry teachers in the last ten years. I can't even begin to count the number of different English teachers we have had. We find good people and train them, and they go somewhere else with higher pay and better facilities.

Yes, as a teacher, I feel that the current educational funding system in Texas is unfair to me. However, I choose to stay in the situation I resent. My students often do not have that choice. If the Army sends their parents to Fort Hood, they must attend school here. They do not have the advantages of technology (which costs more money than we can afford). They see their good experienced teachers leave the district. They use antiquated facilities and dream of modern equipment not available in this district. They dream of a fair chance to reach their fullest potential.

If their dreams continue to be ignored, then we may be setting up conditions for a nightmare from which none of us can escape. We need these young people as tax-paying citizens. We need the weaker ones to learn skills and attitudes that will keep them out of prison and off welfare. We need the stronger ones to lead us into the 21st century. If we fail our students, we fail our future.

As the daughter of a teacher and principal, I grew up listening to talk of problems in Texas schools. I have studied the Texas constitution and I have taught Texas children how lucky they are to live in the state. I have listened to many promises by legislators and governors, but I also have seen them fail to keep their promises of substantially equal educational opportunity for all youngsters. I applauded Judge Harley Clark's ruling and grew depressed at the 3rd Circuit Court of Appeals reversal.

I listened again as our present governor stated that "the issue of education needs to be addressed in the legislature, not in the courts." With disappointment but not surprise I have watched as our legislature avoided the politically unpopular but constitutionally necessary task of providing for substantially equitable opportunities. Now I have only one hope left: the Texas Supreme Court will act in a timely manner to guarantee Texas school children the rights which so long have been denied them. For this reason, I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf supporting Petitioners and Petition Intervenors in the Edgewood case.



Janice A. Stalder

## STATEMENT OF AMICUS CURIAE GRETA A. WHEELER

As a 1988 graduate of Copperas Cove High School and former editor-in-chief of the school newspaper the Blue Beacon, I am well aware of the Edgewood Independent School District, et.al. vs. William Kirby, et.al. lawsuit. I first learned of the case nearly three years ago, when the Board of Trustees at Copperas Cove vote to join the trial as plaintiff intervenors, to sue the state on the ground that the current public school finance system was unconstitutional and unfair to students in property-poor school districts. When I graduated in June 1988, I continued to follow the trial because of my own interest and concern. Now a freshman in college, I look back, hopefully objectively, at the 13 years I spent in C.C.I.S.D.

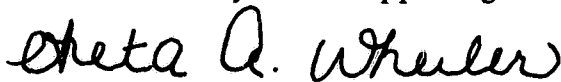
Since Copperas Cove is a military community, a number of students come and go every year. Very few have stayed in C.C.I.S.D. from kindergarten to graduation, but I'm proud to say I was one. However, some of my friends weren't so lucky. They dropped out. The dropout problem in the state of Texas and especially in Copperas Cove is very real to me. I was the first one of my father's kids to graduate from high school; my older brothers and sister dropped out. I would have dropped out too, if a good counselor and teacher hadn't seen the signs and showed enough interest in me to keep me in school. The teacher is still in Copperas Cove and still fighting the overworked and underpaid system. The counselor has moved on to a much better paying job in another (richer) part of Texas.

During my entire school career in C.C.I.S.D, I was in classes that had no fewer than 28 students, even in kindergarten. My art, music and physical education classes were combined with three or four other classes, causing one teacher to deal with as many as 100 kids at a time because the district didn't have the money to hire more teachers. If those classes weren't large, they they were cut down to only 15 or 20 minutes for a class that only met once or twice a week, because of the lack of classroom space.

As I stated before, I was nearly a high school dropout; many of my friends are dropouts. From my kindergarten class, which had 28, I know of 13 students who dropped out of school. Out of the 13 students, five are in prison or on parole in Copperas Cove or nearby towns. It's kind of scary knowing that if I had dropped out, 50 percent of my kindergarten class would be considered "high school dropouts." Luckily I didn't so, it isn't half my kindergarten class, but the numbers don't look much better. It's true I was lucky, but 13 students out of the 28 in that class weren't. They dropped out of school within the last three years of high school. The reasons for their dropping out vary from to another, but if the funds were available for a dropout prevention program, maybe some or all of those 13 might have graduated with me in June of 1988.

Looking back over the past 13 years, I realize that the State Supreme Court needs to hear this case as soon as possible and rule positively on it. It is very apparent that the legislature won't solve this problem of inequality among the school districts in Texas, and the high court should rule that substantially equal education opportunity is indeed the law of the land in Texas.

I authorize an attorney selected by the Equity Center to incorporate this statement in an Amicus Curiae brief on my behalf supporting Petitioners and Petitioner Intervenors in the Edgewood case.

  
Greta A. Wheeler

## STATEMENT OF AMICUS CURIAE SOINE R. SLAYBAUGH

Each Copperas Cove student can think of at least one reason our district should receive additional funds. Several classes are not offered by CCISD that could help create better college students. Some of these classes have often been proposed by the science department, but have repeatedly been turned down due to insufficient funds. Genetics and astronomy would not only help the college-bound students, but they may interest some at-risk students.

There are several music classes not offered. Music theory is not offered because the district can't afford a teacher for the class, much less a classroom.

There is also a lack of computers in both the computer classes and honors classes, which could benefit from the use of a computer. How does Copperas Cove expect to gain more community benefactors if they are turning out educationally deprived students?

Students from Copperas Cove who are going to college will enter playing "catch-up" with students from wealthier districts. Copperas Cove cannot remain a proud school if their students have to be ashamed of the education they have received.

I authorize an attorney selected by the Equity Center to incorporate this statement of an amicus brief on my behalf supporting Petitioners and Petitioner Intervenors in the Edgewood case.

*Soine R. Slaybaugh*  
Soine R. Slaybaugh

## STATEMENT OF AMICUS CURIAE BETH KING

Imagine walking through the hall with hundreds of students crammed into a few square feet. One false move, and a young girl falls and is trampled.

Or imagine sitting on the floor or chair doing your work in your lap because there are not enough desks for the already overcrowded class.

Also imagine trying to read in English while journalism students type in the same room.

All of these situations have and continue to occur at Copperas Cove High School.

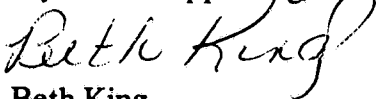
Here at our school, learning is not just stimulation of the mind but a challenge to work around the far too many obstructions. Our computer classes lack computers. If one happens to break down, the student using it must wait or share with another student. Drama students have to perform their plays in their own classroom because our district cannot afford to build an auditorium. Many classes are using books that are falling apart and are outdated.

Many of the UIL activities are suffering. The literary team finds itself struggling for money for every competition. Our entire tennis team has all of two courts to practice on and they are in poor condition. Our school cannot even afford having such sports as a softball or swimming team. But the effects don't end in the class.

Our school is in bad shape itself. There are not enough classrooms to keep an ideal number of students per class. Both the boys and girls restrooms are atrocious. The locks on many doors fail to keep students from breaking in. One of the two gyms we have is battered and in need of renovation. These are only a few areas that need improvement.

As you can see, the Copperas Cove High School is in poor condition. It is the teachers and students who suffer. Teachers cannot spend enough time with individual students. Students are stripped of their right to an education because someone stole their essays or they have to listen to typewriters snapping in their ears. My younger sister and brother will attend the school next year. I care about their education. You should too. You never know if your child, or brother or sister will end up in a poor school district that cannot give them a decent education.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf supporting Petitioners and Petitioner Intervenors in the Edgewood case.



Beth King



## STATEMENT OF AMICUS CURIAE JULEE SCHNITZ

As a native of Copperas Cove and a long-time student in the district, I have felt the money shortage acutely through the years. Although I am a senior, I feel it is necessary to offer this plea for help because of the younger generations who will climb the ladder, as I have, through the Copperas Cove Independent School District.

All problems begin early in a child's life at the kindergarten level. In our modern society, computers are at the very heart of success. Most schools have their kindergarten and first-graders working on numerous computers, while ours only get a few moments throughout the week to be near a computer, much less getting their own computer. As students get older the problems only increase.

Classrooms are too small due to overcrowding, but we have not been able to build new schools since 1977 because we cannot afford them. Even if we could build on, we would not attract teachers to fill the vacancies because our pay rate is so low.

On a more personal note, our high school facilities are not acceptable. We have no baseball field, only one tennis court, no soccer fields, a track and stadium miles from the school and many organizations must share gymnasium time and locker room time. This is disgraceful for a school this size.

As editor of this year's yearbook, I see our student publication being left behind by schools which can afford to produce yearbooks using computers and also producing larger books which cost thousands of dollars more to produce.

It would be easy to become bitter over this unfairness over inequitable funding for property poor school districts. But as I look back and realize many people worked hard to give me a quality education with the resources they had, I feel there is hope for the future. If we are producing students who excel on their test scores with the small amount of money we have, I believe if we had more our program would be unstoppable.

I urge you to quickly agree to hear the case Edgewood vs. Kirby and render a decision favorable to property poor school districts.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf supporting Petitioners and Petitioner Intervenors in the Edgewood case.

  
Julie Schnitz

## STATEMENT OF AMICUS CURIAE JANIS C. McCOY

I am presently a senior in Copperas Cove High School. This is the second Texas public school I have attended in the past four years. Both of these schools have offered average programs to their students. However, I can look around at surrounding schools and observe the excellent facilities, materials and programs offered to their students. These much-needed education enhancers seem to be so close, but yet out of reach for those districts with low, inadequate funds.

The accomplishments that could be made by students with a top level education are limitless. In reality, it is the future of our nation that suffers when students are not given the chance to develop to their highest potential. For a student to learn and participate fully, modern, advanced materials must be made available. A student will want to learn if he or she is introduced to new and exciting programs. More money is needed to provide schools with computers, word processors, scientific equipment, up-to-date textbooks, larger school buildings, larger classrooms, higher pay to attract more teachers and much, much more. Many schools in Texas and other states have these things to aid in their students' education, but what about those that do not? Those students who attend a poor school district have no way of successfully competing with students who are more fortunate in their education.

Many students like me feel that we could benefit from gifted and talented classes that are not offered. I have had honors courses that were independent study where the regular students and honor students shared the same classroom. This is not by any means a betterment in education. Circumstances beyond our control deprive my classmates and me of a top-level learning environment.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf supporting Petitioners and Petitioner Intervenors in the Edgewood case.

  
Janis C. McCoy

## STATEMENT OF AMICUS CURIAE JANET LANTRY

I am in my last year at Copperas Cove High School. I have attended this high school since my sophomore year, after I transferred from a high school in Maryland. I wish that I could say that these past years have been the best of my life, but, unfortunately, I must say that my high school years have been too frustrating to have been "the best." Frustration--it rules my world.

My freshman year in Maryland was wonderful. I was very involved in my challenging classes and other activities; my school was a pleasant environment; I had high hopes for the remainder of high school. I had planned to take five years of French (I took my first year in eighth grade), dance classes, advanced placement (AP) biology, AP English and many other challenging, invigorating courses. Then my father was transferred to Texas before my sophomore year. In my mind, Texas was rich, big, full of opportunities.

All of my Maryland friends envied me -- Texas! WOW!

My sophomore year was quite a disappointment. When I came on my first day I was registered for Spanish I--French was only offered up to the second level. No way--I was not about to take Spanish. So I was put in computer programming, where I shared a computer much of the year. There were no gifted and talented classes, and my compensatory "honors" classes left a lot to be desired with 30 plus people and simply just a course load of more volume--not more challenge. I'll be frank, many of my teachers were not "honors" quality, and those that were didn't have time to devote a lot of effort to challenging their honors classes--they also had "regular" classes. In general, the overall impression I was left with was mediocrity abounding. I began having nightmares about my educational future.

It is hard to go from a good school to one of lower quality without being frustrated and critical. I was very critical initially, but I have come to accept my circumstances, yet not without regret. I regret when I meet students from schools that have so much more than mine in terms of challenging and nurturing opportunities. I regret when I apply to colleges and know that I am competing against students that are so far ahead of me because their schools could afford to offer them computers, smaller classes, better teachers and better courses. I regret when I think about my friends in Maryland who have so much more than me. But I have never given up, despite the frustration; one positive aspect of my circumstance in a poor district is that I have been forced to advance myself independently. But I shouldn't have to educate myself.

I have received an adequate education to prepare me for college, but I strive for excellence, and my high school education is by no means fully what it could have been. I like to look ahead rather than dwell on the past, so I won't go into could have been's. But I will go into what will be's. I know younger students who deserve, need, desire more than what Copperas Cove has to offer. Something needs to be done for them.

Now, Copperas Cove is not, by any means, a total disappointment in education, for I have taken two years of chemistry, advanced biology and a few challenging honors courses. But still, even though the courses exist, they are inferior to what many other schools offer in terms of resources like lab equipment and computers.

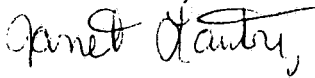
I realize that I cannot take my education, no matter how inferior, for granted. And I know that a superior education carries a high price--my next four years of school will absolutely prove this to me. But public education must not discriminate. I have gained many new perspectives by being subjected to the prejudice of public education. And as important as perspective is, I demand that the classes to come after me won't be subjected to this same prejudice.

STATEMENT OF AMICUS CURIAE JANET LANTRY

Page 2

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf supporting Petitionerss and Petitioner Intervenors in the Edgewood case.

Janet Lantry

A handwritten signature in cursive script that reads "Janet Lantry," with a comma at the end.

## Statement of Amicus Curiae [Kevin R. Hoke]

Despite the recent media announcements concerning the case for equity in education, many people seem unaware that a real problem exists. Similarly, I only realized the problem after seeing that the same standard of education that I thought was impossible to afford, was taken for granted by students from several other school districts. Great and small, these differences defeat the concept of equal educational opportunity, even for very qualified students whom circumstances have placed in a disadvantaged school district.

There is a profound deficiency in the teaching facilities of my school as compared to the other high schools in my district. There are not enough classrooms and as a result several teachers must move from room to room in order to use them during another teacher's conference hour. This renders it necessary for the those teachers to carry all materials from class to class and avoid decoration and display. In a science course, lab facilities are located in the classroom for that class; this results in a definite space restriction during both lecture and laboratory aspects of the class. Many teachers serve as the sponsor for a school activity and must use their classroom for two functions; for example, senior English students must share space with journalism equipment and activities. Often the library must serve as the location for larger lectures and testing. As a result, it is often closed to the general student body during lunch and between classes since there is not enough space to have a room set aside for those other purposes.

Support facilities are also inadequate and pose a greater threat than mere inconvenience. The student parking lot is isolated at night and the expense is too great to keep it well-lit. Thus, students walking to their cars at night after an all-day activity are taking a horrible risk, especially if alone. The school lacks sufficient security to discourage break-ins and vandalism of parked cars, as well as of the building itself. For half of the first semester, part of the student parking lot must be used for marching band practice, much to the irritation of other students. Similarly, the teachers' parking lot, which usually overflows into the visitors' parking and the street, has served for everything from drill team routines to ROTC drills. Moreover, many school presentations and ceremonies are forced to fit into the cafeteria or the gym, neither of which are ideal for events such as band concerts or commencement activities; in fact, my high school is one of the few in District 14-5A that lacks an auditorium.

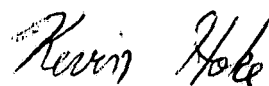
Even if the deficiencies in the facilities of Copperas Cove ISD seem superficial, the deficiencies in educational materials and staff are unacceptable. The pay offered to the teachers is too low for many, especially if the teacher is trying to support a

family. For example, my calculus teacher had little choice but take a position at a local community college; I am now taught by one of the Algebra I teachers. Calculus, as well as most of the other higher level courses, is rapidly fading into extinction. Essentially, there are too few teachers, materials, and funds to support the classes; Advanced Placement courses have been absent for several years now. For many courses, especially English classes, there are too few copies of supplementary materials for each student to have a good chance to study them. Likewise, computer instruction classes have at least two students per computer. After a lecture, this only leaves about 15 minutes for each student to work on assignments. Foreign language classes lack the audio-visual equipment that is standard elsewhere. This also holds true for other expensive materials, such as lab equipment. Overall, there is not enough money to offer much of what is commonplace in districts with a stronger tax base; furthermore, the school district's commitment to providing for the education of as many as possible results in reduced funding for both the very gifted and the profoundly disadvantaged.

In the history of the *Edgewood* case, arguments have flown wildly from all sides. Obviously, the federal government is not required to give aid, nor could it afford to do so. The Texas State Legislature has claimed that it should be allowed to handle the whole matter, yet has given more words than deeds. The wealthy districts have taken a "survival of the fittest" approach, in which they essentially receive as much help from the state as the poorest districts. If this is established as a legal precedent, then state disaster aid for a drought in East Texas could be shared with orchard owners in South Texas, even after a bumper crop of oranges. In short, it is unfortunate when justice, fairness, and constitutionality cannot coincide.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf supporting Petitioners and Petitioner Intervenors in the *Edgewood* case.

Respectfully,

A handwritten signature in cursive script that reads "Kevin Hoke".

Kevin Hoke

## STATEMENT OF AMICUS CURIAE VICKI DONAHUE

As a Copperas Cove High School senior, I have developed a special interest in the Edgewood case because my school and others in this district are suffering greatly due to lack of funds.

Since my father is in the military, I have attended school in many states and districts, including Germany. However, of all the schools I have attended, those in Copperas Cove have been the worst. The schools here do not provide much of a challenge to their students; this is due mostly to the fact that there are no funds for updated textbooks, more teachers and smaller classes. The dropout rate here is alarmingly high, and it comes as no surprise to me. There is no type of support group here for students on the verge of dropping out--there simply is not enough money for it.

One educational opportunity which I seem to have missed here in Copperas Cove is field trips. When I was in Germany, field trips were a regular part of the curriculum. When we studied monasteries, we visited one. When we studied dinosaurs, we went to a museum. Is it not proven that people learn better by experiencing things first-hand? Since I enrolled in Copperas Cove High School in January 1988, I have never been on a field trip. In fact, I have never even heard of one going on!

I feel that for students in Copperas Cove to receive the education they are guaranteed in the constitution, they must first receive just as much money as schools whose students are lucky enough to live in a rich district. In my school, vandalism is a problem; maybe this would cease if my school had the money to renovate and make repairs. It's hard to have pride in your school when it is run-down.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf supporting Petitioners and Petitioner Intervenors in the Edgewood case.

Vicki Donahue



## STATEMENT OF AMICUS CURIAE KEVIN WALKER

It is distressing to consider the conditions under which I have spent the past twelve years of my education. These deficiencies in Copperas Cove I. S. D.'s resources are only evident when compared to the corresponding advantages of more fortunate districts.

To wit, I am in the band program--an involvement which has indicated one specific deficiency in this particular district: a lack of an auditorium. This lack has required our music program to perform in rehearsal rooms, the school cafeteria--in which the volume can be deafening--or even a gymnasium--in which this effect is dramatically worse.

The drama program has the very same problem. Audience seating consists of bench seats or portable chairs, which require extensive set-up.

Our athletic department must cope with a grassy field for practice or an across-town stadium.

But then these simply apply to extra-curricular activities. More problems are academic in nature. Many courses could be offered to enhance specific fields of study, such as higher-level anatomy/physiology, chemistry, biology courses etc.; or more complex and specific math courses; or even specific law and literature courses--not to the extent to which universities reach but more on a fundamental level--to better prepare college-bound students for their higher education.

After all, what is the purpose of high school? Preparation for real life is its purpose.

Many of my freinds have bright futures ahead of them because of their background here at Copperas Cove High School--students whose futures could have been brighter had education been even better than our administrators have made it. Therefore, equality in the quality of education is a very real necessity.

This is not a plea for myself--I have almost finished my stay here--but instead I wish for my sibling and for those who will follow him a better education here than I have received, in an era when students to in one of three directions: immediately into the working world, as a graduate or as a dropout, or further to create a worldly beneficial career. Please hear this plea for these reasons if for nothing else.

I authorize an attorney selected by the Equity Center to incorporate this statement in an amicus brief on my behalf supporting Petitioners and Petitioner Intervenors in the Edgewood case.

*Kevin R. Walker*

Kevin Walker



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amicus Brief in Support of Petitioners' and Petitioner-Intervenors' Applications for Writ of Error has been sent on this 19<sup>th</sup> day of June, 1989, by United States Mail, postage prepaid to all counsel of record.

Sandra R. Nicolas

Sandra R. Nicolas  
State Bar Number 15016500

ARNOLD AND NICOLAS  
800 One Capitol Square  
300 West Fifteenth Street  
Austin, Texas 78701  
512-320-5200

RECEIVED  
IN SUPREME COURT  
OF TEXAS

SHINER INDEPENDENT

SCHOOL DISTRICT

DRAWER 804  
SHINER, TEXAS 77984

JUN 23 1989

June 22, 1989

JOHN T. ADAMS, Clerk

By \_\_\_\_\_ Deputy

C 8353

Texas Supreme Court  
Clerk's Office  
Supreme Court Bldg.

Dear Sir:

As a friend of the Court, I would like for the following information to be used as documentation in the Edgewood vs. Kirby suit on school finance.

The material presented has been pulled from the same printouts provided for the legislature by the Texas Education Agency.

Should there be any question regarding this material, I can be contacted by phone at 512-594-3121 between 8 a.m. - 4 p.m. daily.

Sincerely yours,

SHINER INDEPENDENT SCHOOL DISTRICT

*James H. Stewart*

James H. Stewart  
Superintendent

JHS/ap

# LAVACA COUNTY SCHOOL DISTRICTS

SCHOOL	WEALTH PER ADA	CURRENT TAX RATE	PROJECTED STATE FUNDING
VYSEHRAD	936,787	.4994	+13,328
EZZELL	499,065	.6100	-64,663
HALLETTSVILLE	273,236	.6200	+124,924
SWEETHOME	177,944	.7692	+72,333
SHINER	135,146	.8050	-49,152
MOULTON	130,924	.9626	-57,769

In the interest of brevity, please read the three observations listed below the chart.

It should be clearly seen that the new finance package passed by the 71st Legislature is just as inequitable as was the old (1984) finance system.

How are we suppose to provide a quality educational program with the educational experiences necessary for our children to compete with those students from the wealthy districts? The states' answer seems to be to cut our funds and mandate teacher salary increases.

There seems to be a fundamental difference in the definition of "poor". The state seems to use the "free lunch" program, compensatory education and bilingual education as major components of its definition of poor.

However, I maintain that those three components of the state formula are only a few characteristics of poor schools. The bottom line is taxable property and the potential to raise school taxes.

I am simply requesting the court to review the figures presented and to consider them as it deliberates its verdict.

I remain respectfully yours,

SHINER INDEPENDENT SCHOOL DISTRICT

*James H. Stewart*  
James H. Stewart  
Superintendent

1. The two poorest school districts in Lavaca County stand to lose state money.
2. The two school districts whose patrons are making the greater "tax effort" will lose state money.
3. The wealthiest school districts will gain state dollars.

RECEIVED  
IN SUPREME COURT  
OF TEXAS

JUN 20 1989

JOHN T. ADAMS, Clerk

By \_\_\_\_\_ Deputy

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IN SUPREME COURT  
OF TEXAS

JUN 26 1989

C 8353

JOHN T. ADAMS, Clerk

By \_\_\_\_\_ Deputy

NO. C-8353

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IN THE  
SUPREME COURT OF TEXAS

-----  
EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Petitioners

V.

WILLIAM KIRBY, ET AL.,

Respondents  
-----

BRIEF OF AMICUS CURIAE AMARILLO INDEPENDENT SCHOOL DISTRICT  
IN SUPPORT OF PETITIONERS AND PETITIONER-INTERVENORS  
-----

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NO. C-8353

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IN THE  
SUPREME COURT OF TEXAS

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BRIEF OF AMICUS CURIAE AMARILLO INDEPENDENT SCHOOL DISTRICT  
IN SUPPORT OF PETITIONERS AND PETITIONER-INTERVENORS  
-----

TO THE SUPREME COURT OF TEXAS:

Amicus Curiae, Amarillo Independent School District, files this Brief in Support of Petitioners, Edgewood Independent School District, et al., and Petitioner-Intervenors, Alvarado Independent School District, et al.

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### INTEREST OF THE AMICUS CURIAE

The Amarillo Independent School District is a medium size school district in a medium size city in Texas. It's citizens are neither predominantly poor nor predominantly black. Nonetheless, the District and it's citizens are severely disadvantaged by the Texas school finance program as it exists today.

In 1985 the Amarillo ISD had 24,729 students in average daily attendance. (P.X. 116) In that same year it had within the District property with a taxable market value of \$108,861 per student in average daily attendance. (P.X. 102C) The District had a total tax rate of \$0.7337 (P.X. 104C) which enabled it to spend \$2,143 per student. (P.X. 105C) Contrast this with another district in Texas that was able to spend \$13,429 per student with a tax rate of only \$.09. (P.X. 215-16; P.X.103C)

Highland Park School District in Dallas County can raise \$100 per student for each \$.01 tax rate while a tax rate of \$.0920 is required to raise the same \$100 in the Amarillo ISD. (P.X. 108C)

These are the economic inequities which give the Amarillo ISD an interest in the issues before this court.

### ARGUMENT

#### **I. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION VIOLATES THE STATE CONSTITUTIONAL GUARANTEE OF EQUAL RIGHTS.**

The evidence and the fact findings by the trial court portray a system of school finance in Texas that is both disparate and inequitable.

The impact of the system on the school children of Texas has been presented to this court with scholarship and eloquence by Petitioners and Petitioner-Intervenors and need not be repeated in this brief. Amarillo ISD adopts the arguments and positions of Petitioners and Petitioner-Intervenors that the students of Texas living in property poor districts are denied the equal rights protection of the Texas Constitution.

This Amicus has no desire to contribute to that burden created by the seventy-five briefs filed in this case by filing another lengthy brief. Amarillo ISD's attempt at brevity should not, however, be mistaken for a lack of commitment to reform of the school funding system.

The current system is inequitable to the children of Texas and unconstitutional for all the reasons stated by Petitioners and Petitioner-Intervenors and should be invalidated.

**II. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION VIOLATES THE DUE COURSE OF LAW AND EQUAL TAXATION PROVISIONS OF THE TEXAS CONSTITUTION**

The findings of fact reveal the vast disparity in property wealth (Tr. 548-49), in tax burden (Tr. 553-55), and in expenditures (Tr. 551-60). The findings further demonstrate the failure of state allotments to cover the real cost of education (Tr. 565-68) and the denial of equal educational opportunity to many Texas school children (Tr. 601).

Those who would offer "local control" as a justification for the inequities of the present system of school funding seek

refuge in an era before the adoption of House Bill 72. The Legislature and the Texas Education Agency have imposed increasingly heavy financial burdens on local school districts.

The Texas Education Compensation Plan prescribes minimum monthly base salaries for all teachers together with step increases for each year's experience. Tex. Educ. Code § 16.045. The Legislature has further mandated student/teacher ratios and class sizes. Tex. Educ. Code § 16.054.

Local districts are required to adopt an appraisal process to appraise the performance of all teachers. Tex. Educ. Code § 13.302-13.304. They are required by statute to put into place programs for identifying gifted and talented students and to promulgate a program for these students to be approved by the Central Education Agency. Tex. Educ. Code § 21.651 et. seq. Testing for dyslexia and related disorders in students is statutorily required. Tex. Educ. Code 21.924 Bilingual education is mandatory. Tex. Educ. Code 21.453 Districts are required to provide a forty-five minute preparation and planning period within the seven hour school day for each teacher. Tex. Educ. Code 13.903 Each teacher, by statute is required, to have a duty free lunch period. Tex. Educ. Code 13.909 Under Tex. Educ. Code 21.101 and 19 TAC § 75.51, Districts are required to buy the equipment and provide the personnel to make students computer literate.

The seemingly simple legislative mandate to the State Board of Education to designate the essential elements of a "well

balanced curriculum" (Tex. Educ. Code 21.101(c)) has multiplied like the Andromeda Strain into 250 pages of administrative minutiae, every line of which is lawfully binding on local school districts. See: 19 TAC Chapter 75 Curriculum §§ 75.1-75.218.

Each legislative and administrative enactment has, undoubtedly, been perceived as beneficial to the students of Texas, but the majority of the programs are totally unfunded with the remainder receiving only partial funds. Further, no allowance has been made for the widely varying fiscal abilities of local districts. Each mandated program requires additional time, training, personnel, buildings and equipment, the funding for which has been left to the local districts and the local taxpayer. Wealthy districts have little trouble meeting these obligations. For poorer districts, such state-imposed mandates have required substantial increases in property tax rates.

To the extent that the financial burden of funding legislatively mandated programs, has been placed on local districts and local taxpayers, the Legislature has patently ignored the provisions of the Texas Constitution Article I Section 19 which prohibits unequal taxation. A \$.01 tax rate in the richest district can raise \$1,400.00 of revenue per student while the poorest district can only raise only \$2.00 per student (P.X. 104S, 106S, 108S, 110A, 114A). To fund any state mandated program, taxpayers of Amarillo are taxed at a rate nine times

that of the taxpayers of Highland Park School District in Dallas County. (P.X. 108C).

The burden "to establish and make suitable provision for the support and maintenance of an efficient system of public free schools" are placed on the Legislature of the State. Tex. Const. art. VII, § 1. The Legislature has in large portion delegated this duty to local school districts and has by such delegation placed the tax burden on the local district. By doing so, the Legislature has attempted by indirection to levy an unequal tax on the property owners of the State.

The school funding system as it presently exists clearly violate Texas Constitution Article VIII Section 1 which provides that "Taxation shall be equal and uniform" and that property ". . . shall be taxed in proportion to its value." Because of disparity of property values within local districts the tax burden is neither equal nor uniform.

Texas Constitution Article III Section 52 prohibits the Legislature from passing "local or special laws" . . . "Exempting property from taxations". The system as it presently exists exempts the taxpayers of rich districts from equal taxation just as surely as if the names of the property rich districts appeared in the caption of the Legislation.

**III. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION VIOLATES THOSE PROVISIONS OF THE TEXAS CONSTITUTION PROHIBITING THE APPROPRIATION OF STATE FUNDS FOR PRIVATE BENEFIT**

The system relies heavily on local district taxation (Tr. 548) yet there is a vast disparity in local property wealth among the Texas school districts (Tr. 548-50) resulting in enormous differences in the quality of educational programs offered across the State and the burdens placed on local taxpayers.

There is a direct positive relationship between the amount of property wealth per student in a district and the amount the district spends on education. (Tr. 555). Because their tax bases are lower, poorer districts must tax at higher rates than the wealthier districts. Even with higher tax rates, however, poorer districts are unable to approach the level of expenditures maintained by wealthier districts. Wealthier districts, taxing at much lower rates, are able to spend significantly more per student. Conversely, poorer districts endure a much higher tax burden, yet are still unable to adequately fund their educational programs.

Increased financial support enables wealthy school districts to offer much broader and better educational experiences to their students. (Tr. 559). These additional educational benefits include more extensive curricula, enhanced support through additional training materials and technology, improved libraries, more extensive counseling services, special programs to combat the dropout problem, parenting programs to involve the family in the student's educational experience, and lower pupil-teacher

ratios. (Tr. 559). In addition, districts with more property wealth are able to offer higher teacher salaries than poorer districts in their areas, allowing wealthier districts to recruit, attract, and retain better teachers for their students. (Tr. 559).

To the extent that the parents and taxpayers of property rich districts are able to provide a better education for their children with a substantially smaller tax burden than those in property poor districts, the present system is ensuring to the direct personal benefit of the citizens of rich districts.

Even the most naive should perceive a violation of Texas Constitution Article XVI Section 6 which provides that "No appropriation for private or individual purposes shall be made." It is equally clear that the system violates the prohibitions of Texas Constitution Article III Section 51 which provides that "The Legislature shall have no power to make any grant or authorize the making of any grant of public monies to any individual. . ." The Legislature has indirectly appropriated monies to provide the children of wealthy districts quality education, while the children of a poor districts receive whatever educational services their parents and neighbors can afford.

The Legislature has used the local districts to fund quality education for the children living in property rich districts while the children of the balance of the state are



relegated whatever educational services their parents and neighbors can afford.

The present system is constitutionally infirm and should be invalidated.

CONCLUSION AND PRAYER FOR RELIEF

Those who would defend the present system by strained constitutional interpretation based on sources other than the Constitution itself deal in obscuratation.

The egalitarian principles of the writers of the Texas Constitution that no individual or group of individuals should receive preferred treatment, that prohibited grants of public monies for the private personal benefit, and that all should be taxed equally, appear with pristine clarity from the very words of the Texas Constitution. The provisions of the Texas Constitution applicable to the issues before this court are neither ambiguous nor complicated. For the reasons stated in this Brief, the undersigned amicus curiae requests that this Court reverse the judgement of the court of appeals and affirm the judgement of the trial court.

Respectfully submitted,

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By: 

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief in Support of Petitioners and Petitioner-Intervenors has been sent on this 23rd day of June, 1989, by United States Mail, postage prepaid to the following:

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# MISCEL- LANEOUS

C 8353

MOTION FOR REHEARING-CAUSE

NO. C-8353

**FILED**  
IN SUPREME COURT OF TEXAS IN THE SUPREME COURT OF TEXAS

\* \* \* \* \*

OCT 17 1989

~~JOINT AMMOS FILE~~  
EDGEWOOD INDEPENDENT SCHOOL  
DISTRICT, ET AL.,

PETITIONERS,

v.

WILLIAM KIRBY, ET AL.,

RESPONDENTS.

\* \* \* \* \*

PETITIONERS EDGEWOOD I.S.D. ET AL AND ALVARADO I.S.D. ET AL.  
MOTION FOR REHEARING ON ATTORNEYS FEES ISSUE

\* \* \* \* \*

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Now come Edgewood I.S.D. et al. and Alvarado I.S.D. et al., Petitioners, who file this Motion for Rehearing pursuant to Rule 190, Tex. App.P. This Motion is limited to the issue of the amount of attorneys fees to which Petitioners are entitled to Judgment against state Defendants.

This Court held in its October 2, 1989 opinion:

Petitioners are entitled to recover against the state their attorney fees as found by the trial court. Tex. Civ. Prac. & Rem. Code §§ 104.001-104.002; Texas State Employees Union v. Texas Dep't. of Mental Health and Mental Retardation, 746 S.W. 2d 203 (Tex.1987); see also Camarena v. Texas Employment Comm'n, 754 S.W. 2d 149 (Tex.1988). However, the trial court did not abuse its discretion in refusing to award attorneys fees against the defendant school districts. See Oake v. Collin County, 692 S.W.2d 454 (Tex.1985).

Edgewood ISD v. Kirby, 33 Tex. Sup. Ct. J. 12,18 (Tex.1989).

This is a judgment for petitioners for their attorneys fees as found by the trial court, i.e. for fees and costs of \$850,960.79 and \$40,000.00 for appellate work for a total of \$890,960.79 for Petitioners Edgewood I.S.D. et al., and \$324,244.84 for Petitioners Alvarado I.S.D. et al.

Attorneys for Respondents state officials, however, have stated that they consider the total fee award for all parties to be limited to \$300,000 pursuant to Tex. Civ. Prac. & Rem. Code §104.003.

In order to avoid additional litigation before the trial court and appellate courts, Petitioners seek a clarification of this Court's opinion to specify that Petitioners Edgewood I.S.D. et al.,

are entitled to a judgment of \$890,960.79 and Petitioners Alvarado I.S.D. et al. are entitled to a judgment of \$324,244.84 for their respective fees and costs.

I. DEFENDANT STATE OFFICIALS HAVE WAIVED THEIR IMMUNITY SINCE THEY DID NOT PLEAD IT

Whether this Court's judgment is based upon the Governmental Liability Act, Tex. Civ. Prac. & Rem. Code §§ 104.001-104.002, or the Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code § 37.009, the State has waived any immunity it might have had since the State Defendants filed only a general denial (TR.72) and never filed an affirmative defense of governmental immunity.

Plaintiffs specifically requested attorneys fees in their May 1984 original petition (TR.28), March 1985 First Amended petition (TR.69), October 1986 Second Amended Petition (TR.163), and November 1986 Third Amended Petition (TR.279). Plaintiff-Intervenors requested attorneys fees in each of their petitions in intervention.

Defendants State of Texas, Kirby, State Board of Education, Clements, Bullock and Mattox FILED ONLY A GENERAL DENIAL. They never pleaded the affirmative defense of governmental immunity. On April 1, 1985, the State Defendants filed an Answer as follows:

DEFENDANTS' ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Defendants herein by and through their undersigned counsel and pursuant to Rule 92 of the Texas Rules of Civil Procedure deny generally, all and singular

the allegations in Plaintiffs' First Amended Petition and demand strict proof thereof.

Respectfully submitted,

(TR.72)

State Defendants filed no responsive pleading to either Plaintiffs' Second or Third Amended petition or to Plaintiff-Intervenors petitions filed in late 1986. State Defendants have waived whatever governmental immunity they might have had for failure to meet their pleading burden under Tex.R.Civ.P. 94.

In Davis v. City of San Antonio, 752 S.W. 2d 518 (Tex.1988) this Court unanimously <sup>1</sup> held that the City of San Antonio waived its defense of governmental immunity by failure to affirmatively plead it in the City's answer, even though the City requested a judgment N.O.V. on the immunity claim, after a jury verdict against the City. Davis, 752 S.W. at 519.

This Court held:

... governmental units litigate as any other party in Texas courts and must observe the same Rules

...

Having not met its pleading burden under Tex.R.Civ.P. 94, the City is not entitled to avoid liability on the ground of governmental immunity.

Id.

In this case, the State Defendants even filed, pre-trial, a lengthy motion for summary judgment in the case and did not mention

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<sup>1</sup> Four Justices dissented on the issue of sufficiency of cross-points in appellate procedure, but the immunity decision was unanimous, 752 S.W.2d at 523.



governmental immunity. (TR.77-116).

The District Court would have granted judgment for Plaintiffs and Plaintiff-Intervenors for attorneys fees against State Defendants had it not been for immunity. The State Defendants have no immunity. If Plaintiffs prevail they are entitled to Judgment for attorneys fees from State Defendants.

**II. THE LIMITATIONS OF §104.003**  
**DO NOT APPLY IN THIS CASE**

A. This Court has ruled that Petitioners are entitled to "attorneys fees as found by the Trial Court." 33 Tex. Sup. Ct. J. at 18. The Trial Court found Petitioners fees to be in excess of the \$300,000 amount in § 104.003(a)(1). <sup>2</sup>

Even if §104.003 applies, the \$300,000 limitation does not apply in this case. There has certainly been more than "a single occurrence" of a "deprivation of a right, privilege, or immunity" in this case. The rights of plaintiffs have been denied every school day. Alternatively, the "rights privileges and immunities" of plaintiffs have been denied every time a school finance bill was passed. The 1981, 1983, 1984 (H.B. 72), 1985, 1987 and 1989 school finance bills have been passed within the time period of this

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<sup>2</sup> Since this case was filed, tried and came to Judgment before Sept. 1987 the applicable version of § 104.003 is that existing in 1984 (Vernons 1986) not the amended version Acts 1987, 70th Leg. Ch. 1049, Sept. 1, 1987 see Vernon's Pocket Part. This distinction between the pre-1987 and post-1987 statute was recognized in Texas Department of Human Services v. Methodist Retirement Service, Inc. (Tex. Civ. App. - Austin 1989) 3-88-110-CV. In other words in this case § 104 is a waiver of immunity, not just an indemnification.

lawsuit, i.e. within 4 years before the filing of the petition in May 1984.

If each of the 68 Plaintiffs and Plaintiff-Intervenor school districts and each of the 25 Plaintiff families had filed separate lawsuits alleging deprivation of rights in 68 different school districts they would not be limited to \$300,000 in fees, especially when the deprivation was daily and at the very least biennial. The fact that they proceeded in a consolidated endeavor should not limit their recovery.

B. The State Defendants have never plead the \$300,000 limitation, either before the trial court or in either appellate court in this case. Their only argument has been that §104 did not apply because of the state governmental immunity. See state officials Court of Appeals Reply Brief, "Reply Point No. 5, The Trial Court Correctly Denied Attorney's Fees Under the Doctrine of Sovereign Immunity."

### III. PETITIONERS ARE ENTITLED TO ATTORNEY FEES UNDER THE DECLARATORY JUDGMENT ACT

Petitioners plead and obtained a Declaratory Judgment (TR. 502-504) under the Uniform Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code §37.004. That Act provides for the award of "costs and reasonable and necessary attorney's fees as are equitable and just," Tex. Civ. Prac. & Rem Code § 37.009.

State Defendants have no immunity from judgment under the Declaratory Judgment Act. Texas Highway Com. v. Association of

Steel Importers, 372 S.W.2d 525 (Tex.1963). A Declaratory Judgment was properly entered and attorneys fees are appropriate under the Act. City of Ft. Worth v. Groves, 746 S.W. 2d 907 (Tex.Civ.App.-Fort Worth 1988, no writ). There is no statutory limit to the amount of attorney fees to be recovered under the Declaratory Judgment Act. If the state seeks to assert sovereign immunity as a defense to recovery of attorney fees under the Declaratory Judgment Act, it must affirmatively invoke that defense. Davis v. City of San Antonio, supra. The State's pleadings failed to assert the defense of sovereign immunity. The State has no foundation for asserting any limitation upon the amount of recoverable fees.

IV. THIS COURT HAS ALREADY DECIDED THIS  
ISSUE IN PETITIONERS FAVOR

This motion for rehearing is filed only to expedite the payment of fees to Plaintiffs who have labored (and are now laboring) on this case for six years. The only rational interpretation of this Court's language is that Petitioners are entitled to all of the fees found reasonable by the trial court, "as found by the trial court." That amount is \$890,960.79 and \$324,244.84, respectively, not a total of \$300,000.

CONCLUSION AND PRAYER

Under the Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code § 37.001 et seq and the Governmental Liability Act, Tex. Civ. Prac. & Rem. Code § 104.001, this Court should clarify its opinion

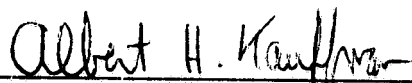
to render judgment to Petitioners for attorney fees from state defendants for \$890,960.79 for Petitioners Edgewood I.S.D. et al (plaintiffs below) and \$324,244.84 for Petitioner Alvarado I.S.D. et al (Plaintiff-Intervenors below).

Respectfully submitted,

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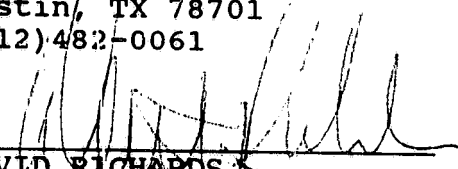
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CERTIFICATE OF SERVICE

I have sent by Federal Express copies of Petitioners Edgewood I.S.D. et al. and Alvarado I.S.D. et al. Motion for Rehearing on Attorneys Fees Issue on this 17th day of October, 1989 to all counsel of record.

  
\_\_\_\_\_  
DAVID RICHARDS  
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CERTIFICATION OF SERVICE

I certify that a true copy of this document was mailed to the following counsel of record on June 28, 1989:

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FILED  
IN SUPREME COURT  
OF TEXAS

**C 8353**

June 28, 1989 JUN 29 1989

JOHN T. ADAMS, Clerk  
By \_\_\_\_\_ Deputy

Mr. John T. Adams  
Clerk of the Texas Supreme Court  
P. O. Box 12248  
Austin, TX 78711

Re: Edgewood Independent School District  
v. Kirby - C-8353

Dear Mr. Adams:

Please bring this short letter brief to the attention of each of the members of the Court. This case is set for oral argument on July 5, 1989.

Two states have recently declared their respective school finance systems unconstitutional under their respective constitutions.

I. Helena Elementary School District #1 v. The State of Montana, 769 P.2d 684 (Mont.1989).

The Montana Supreme Court held that the current financing system violated the state constitution because of large disparities in per pupil spending which translated into unequal educational opportunities. The Montana Constitution, which was written in 1972, provides in Article X, Sec 1 (1): "Equality of educational opportunity is guaranteed to each person of the state." The Montana Supreme Court held that the state's school finance system violated this section guaranteeing equality and that finding based on evidence of great differences which existed in the wealth of various school districts which resulting in disparities in spending per pupil as high as 8 to 1. Id. at 686.

On the issue of separation of governmental power between the three branches, the Montana Court found that the judiciary was correct in examining the constitutionality of the financing system. The Justices found that a clear statement of the obligations on the part of the Legislature to "provide a basic system of free quality public elementary and secondary schools"

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Letter to John Adams  
June 27, 1989  
Page 2

(Mont. Const. Art. X Sec. 1 (3)) was not intended to be a limitation on the guarantee of equal educational opportunity. The Montana Supreme Court also held that the Montana Constitutional provision creating school districts did not insulate the state-local shared system from a finding of unconstitutionality.

As to the contention that the local control of the school districts should not suffer interference from the legislature or the judiciary, the Court stated, "...the present system of funding may be said to deny the poorer school districts a significant level of local control, because they have fewer options due to fewer resources." Id. at 690.

II. Rose v. The Council For Better Education, 88-SC-804-TG,  
June 8, 1989.

The Supreme Court of Kentucky found education to be a fundamental right under the Kentucky Constitution. Applying the strict scrutiny standard, the Court held that the Kentucky legislature had failed to establish an efficient system of public schools and had therefore fallen short of its constitutional duty. The Kentucky Constitution has similar phrasing to the Texas Constitution, and in Section 183 provides:

"The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State." Ky. Const. Sec. 183.

The Court defined "efficient" as an adequately funded, uniform system which provides every child in the Commonwealth an "equal opportunity to an adequate education." Id. at 53. The definition also included the role of the legislature to assure operation without waste or mismanagement as well as seven specific skills and areas of knowledge with which every child should be provided.

The Kentucky Court also considered the arguments on separation of power and decided that constitutional review was a judicial duty.

"To avoid deciding the case because of 'legislative discretion,' 'legislative function,' etc. would be a denigration of our own constitutional duty. To allow the General Assembly (or, in point of fact, the Executive) to decide whether its actions are constitutional is literally unthinkable." Id. at 52.

Noting that the Kentucky Constitution contains a specific provision which relates to separation of powers among the three independent branches of government the Court held that defining



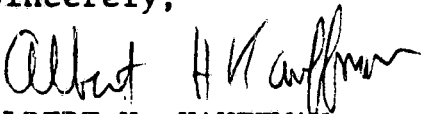
Letter to John Adams  
June 27, 1989  
Page 3

"efficient" and mandating the legislature to bring the public school system into compliance was within the judiciary's power.

Finally, the Court stated that the legislature's duty to provide equal opportunity to an adequate education could not be shifted to local counties and local school districts.

Thank you for your consideration of the above material.

Sincerely,

A handwritten signature in cursive script, appearing to read "Albert H. Kauffman".

ALBERT H. KAUFFMAN  
Attorney for Petitioner Edgewood I.S.D. et al.

AHK:mg

cc: all counsel of record

**FILED  
IN SUPREME COURT  
OF TEXAS**

**JUN 26 1989**

**JOHN T. ADAMS, Clerk**  
By \_\_\_\_\_ **Deputy**

**C 8353**

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June 23, 1989

The Supreme Court of Texas  
P. O. Box 12248  
Capitol Station  
Austin, Texas 78711

Attention: Peggy Littlefield, Chief Deputy

RE: Case Number- C-8353 - EDGEWOOD INDEPENDENT SCHOOL  
DISTRICT ET AL. vs. WILLIAM KIRBY ET AL.

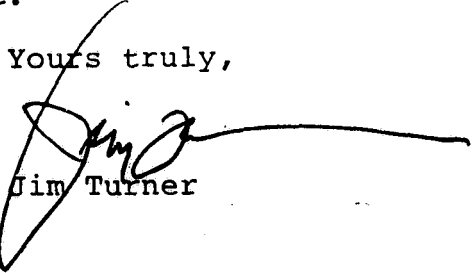
Dear Ms. Littlefield:

Enclosed is the acknowledgement of notice of oral argument in the above styled case. I will argue on behalf of Eanes I.S.S. and the 21 other school districts that I represent. I have joined in a motion to permit more than two counsel to argue the case before the Court. This motion is filed on behalf of my clients and joined by Mr. Earl Luna who represents a similar number of school district intervenors and by Mr. Ray Hutchison and/or Jim Deatherage, who jointly represent the Irving I.S.D.

*Andrews*  
*I.S.D.*

It is our intent to divide the argument in a similar manner to the division of argument made by the Respondent State of Texas and Respondent School Districts in the briefs filed with the Court. I would appreciate you bringing this motion to the attention of the Court.

Yours truly,

  
Jim Turner

JT:dw  
Enclosure

FILED  
IN SUPREME COURT  
OF TEXAS

C 8353

NO. C-8353

JUN 22 1989

AGOSTI L. ADAMS, CLERK

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IN THE  
SUPREME COURT OF TEXAS

---

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,  
Petitioners,

V.

WILLIAM KIRBY, ET AL.,  
Respondents.

---

RESPONDENTS' MOTION TO PERMIT  
MORE THAN TWO COUNSEL TO ARGUE  
FOR RESPONDENTS AND TO ENLARGE  
TIME FOR ARGUMENT

---

TO THE SUPREME COURT OF TEXAS:

Come now Andrews Independent School District, et al., Eanes Independent School District, et al., and Irving Independent School District, Respondents herein, and file this Motion pursuant to the provisions of Rule 172(b) of the Rules of Appel-

late Procedure to permit four (4) counsel to argue for Respondents in the above styled and numbered cause:

1. This cause is set for oral arguments on July 5, 1989. Respondents in this cause consist of four (4) distinct groups. The State of Texas and its officials are represented by the Attorney General's office through Mr. Kevin O'Hanlon. The Andrews Independent School District, et al. group of Defendant-Intervenors/Petitioners are represented by Mr. Earl Luna and Mr. Robert E. Luna and Ms. Mary Milford of the Law Offices of Earl Luna, P. C. The Eanes Independent School District, et al. group of Defendants-Intervenors/Petitioners are represented by Mr. Jim Turner and Mr. Tim Hall. The Irving Independent School District Defendant-Intervenor/Petitioner is represented by Mr. James W. Deatherage and by Mr. Ray Hutchison and Mr. Robert Brown of Hutchison, Price, Boyle, Brooks & Dransfield. All four of these groups filed independent Briefs in Response to the Application for Writ of Error. These four groups have maintained their separate identities and representations since the inception of this suit and request this Court to allow them to continue to do so. These Respondents jointly request leave of court to designate four (4) counsel, one representing each group, to present oral argument before this Court.

2. Respondents also request this Court to increase the time for oral argument from the allotted one hour to one hour and twenty-five minutes in order to allow Respondents to completely address the issues and the voluminous record in this case. Respondents request the Court to allocate forty (40) minutes to

counsel for the State of Texas and fifteen (15) minutes to each of three (3) counsel representing school districts.

WHEREFORE, PREMISES CONSIDERED, the Respondents respectfully request this Court to grant leave for four (4) counsel to be heard on the side of the Respondents, to increase the time for argument, and for such other relief to which they may show themselves justly entitled to receive.

Respectfully submitted,

Mr. Earl Luna  
Mr. Robert E. Luna  
Ms. Mary Milford  
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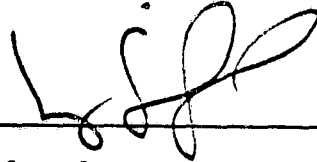
Attorney for Irving I.S.D.

For all of the above counsel

By:   
EARL LUNA (Bar No. 12690000)

CERTIFICATE OF SERVICE

This is to certify that the foregoing Respondents' Motion to Permit More Than Two Counsel to Argue for Respondents has been forwarded on this the 21st day of June, 1989, to the following counsel of record as shown below:



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"rsp/mtn-edgewood" (MM2)

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OF TEXAS

C 8353

No. C-8353

JUN 23 1969

JOHN T. ADAMS, Clerk  
By \_\_\_\_\_ Deputy

IN THE  
SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,  
Petitioners

V.

WILLIAM KIRBY, ET AL.,  
Respondents

PETITIONERS' RESPONSE TO RESPONDENTS'  
MOTION TO ENLARGE TIME

TO THE SUPREME COURT OF TEXAS:

COMES NOW the Edgewood Independent School District, et al. and Alvarado Independent School District, et al., Petitioners herein and respond to the motion to permit more than two counsel to argue and to enlarge time for argument and respectfully advise the Court as follows:

I.

Petitioners have no objection to expanding the number of persons permitted to argue for Respondents. Petitioners themselves may wish to have more than two attorneys argue on behalf of the collective position of Petitioners.

II.

Petitioners do object to any expansion of time for argument. The Court in our view has allotted ample time and expansion is unnecessary.

WHEREFORE, PREMISES CONSIDERED, your Petitioners respectfully urge the Court to allow additional counsel to argue but deny expansion of time for argument.

Respectfully submitted,

RICHARDS, WISEMAN & DURST  
600 West 7th Street  
Austin, Texas 78701  
(512) 479-5017



---

DAVID R. RICHARDS  
State Bar No. 16846000

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ATTORNEYS FOR PETITIONERS  
EDGEWOOD I.S.D., ET AL.

CERTIFICATE OF SERVICE

This is to certify the foregoing Petitioners' Response has been forwarded on this the 23rd day of June, 1989, to all counsel of record.

  
\_\_\_\_\_  
DAVID R. RICHARDS

C 8353

No. C 8353

---

IN THE  
SUPREME COURT OF TEXAS

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FILED  
IN SUPREME COURT  
OF TEXAS

JUN 28 1989

JOHN T. ADAMS, Clerk  
Deputy

By

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Petitioners

V.

WILLIAM KIRBY, ET AL.,

Respondents

---

MOTION BY PETITIONERS TO MODIFY  
ALLOCATION OF TIME FOR ORAL ARGUMENT  
AND TO EXPAND THE NUMBER OF ATTORNEYS  
PERMITTED TO ARGUE

---

TO THE SUPREME COURT OF TEXAS:

COME NOW the Petitioners and respectfully move the Court as follows:

I.

The Court has previously entered its Order permitting four attorneys to present argument on behalf of Respondents. Petitioners seek leave to permit three attorneys to appear on behalf of the joint Petitioners.

II.

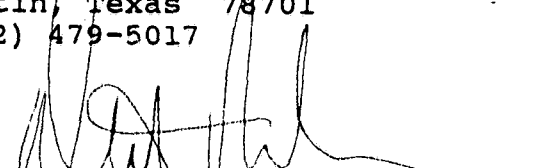
Without expanding the total time allotted to Petitioners for oral argument, Petitioners request that they be permitted to reallocate an additional 5 minutes to rebuttal so that Petitioners' opening argument would consume 55 minutes and rebuttal 20 minutes.

We respectfully urge that this reallocation is appropriate in view of the fact that it does not represent an expansion of total time for argument and merely permits additional time to respond. In this connection 15 minutes is normally allocated to Petitioners to respond to a 30 minute argument and it would be appropriate to allow a 20 minute response in view of the one hour argument allocated to Respondents.

WHEREFORE, PREMISES CONSIDERED, your Petitioners respectfully pray that they be permitted this modification of the argument scheduled.

Respectfully submitted,

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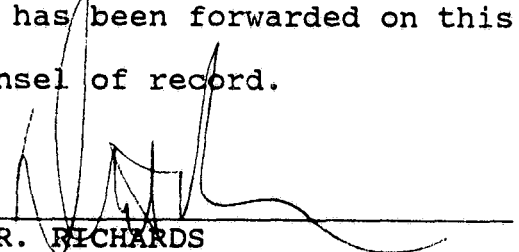
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ATTORNEYS FOR PETITIONERS  
EDGEWOOD I.S.D., ET AL.

CERTIFICATE OF SERVICE

This is to certify that the foregoing Motion by Petitioners to Modify Allocation of Time for Oral Argument and to Expand the Number of Attorneys Permitted to Argue has been forwarded on this the 28th day of June, 1989, to all counsel of record.

  
\_\_\_\_\_  
DAVID R. RICHARDS

**END**